

BRIDGING THE GAP  
HANDLING A REAL ESTATE CLOSING IN UPSTATE NEW YORK

I. Contract Basics

A. Essential Terms

1. Identification of the Property, Identification of the Parties, Consideration and Purchase Price.
2. Any material term which remains left open will cause the contract to be unenforceable.

B. Addenda to contract

C. Property Condition Disclosure Statement

II. Role of Brokers

III. Attorney Approval

- A. The contract is required to have an Attorney Approval clause and a contract without it might be unenforceable.
- B. Review contract with client.
- C. Preparation of letter. If representing a seller, consider holding approval letter until last minute in case of competing offers.

IV. Contingencies

A. The contract can be contingent upon almost anything.

1. Structural
2. Pest
3. Lead Paint
4. Radon
5. 48 hour
6. Septic
7. Environmental Issues

- a. Oil Tanks
- b. Hazardous Waste

B. Prepare CYA letter if client refuses inspections.

C. Diary dates and follow up.

V. Mortgage

A. Make contact with Bank Attorney.

B. Discuss bank fees and procedures with client.

VI. Title Issues

A. Marketable Title

1. What makes title unmarketable?

- a. Litigation
- b. Foreclosure
- c. Judgments

B. Review the Title Report

- 1. Judgments
- 2. Easements
- 3. Tax Searches
- 4. Deed Restrictions

C. Survey Affidavit

D. Mortgagee Policy vs. Owner's (Fee) Policy

- 1. Statement declining Owner's Policy
- 2. Market Value Rider

E. Review of the Abstract

- 1. Certification of Abstract and liability issues.

## VII. Survey

- A. Review the survey for encroachments.
- B. Compare the metes and bounds description in the deed with the survey.

## VIII. Deed Preparation

- A. Types of Deeds—Warranty, Trustee's, Executor's, Bargain and Sale, Quitclaim
- B. Review of Deeds.
  - 1. Buyer: If you represent the buyer, compare the description and make sure you are receiving the type of deed you agreed to receive pursuant to the contract. You should review the deed PRIOR to closing to avoid ugly deeds.
  - 2. Seller: If you represent the seller, prepare the deed and review the description.
    - a. Preparation of the "being" clause.

## IX. Pre-Closing Checklist

- A. Walkthrough
  - 1. Broom clean
  - 2. Make sure all items to be included are included
  - 3. Escrow for incomplete items
- B. Remind client to transfer utilities, etc.
- C. If representing seller, make sure that your client understands that they must be completely moved out by the time of closing—no exceptions!
- D. Keys, Garage Door Opener, etc.
- E. Holdover Agreements and Early Occupancy Agreements
- F. Remind client to bring ID and checks to closing.
- G. Certificate of Occupancy

- H. Smoke Alarm Affidavit
- I. Carbon Monoxide Detector
- J. Homeowner's (Hazard) Insurance Binder with paid receipt for one year's premium.

X. Closing Date

- A. Time of the Essence. Until someone declares time of the essence, the purchaser will have a reasonable time after the contract closing date to perform the contract.
- B. Review closing date with clients and other attorneys.

XI. Closing

A. Purchase

- 1. Preparation of Statement of Sale
  - a. Adjustments
    - i. Taxes
    - ii. Water
    - iii. Heating Oil/Propane
    - iv. Down Payment
- 2. Preparation of Statement of Costs
  - a. Consult with Bank Attorney regarding bank fees, review Closing Disclosure which must be signed 3 business days before closing.
- 3. Preparation of RP-5217 Equalization & Assessment Form (\$75 filing fee).
- 4. Review Contract to insure that all terms have been carried out.
- 5. Review terms of any escrow items. Don't forget any funds you may be holding in escrow.
- 6. Review Statement of Sale and Statement of Costs with client and tell client how much money she will need to bring to closing in the form of certified funds or cashier's checks.

7. Call Title Company Representative regarding final rundown and confirmation of attendance at closing.

B. Seller's Closing

1. Preparation of Statement of Sale.
  - a. Adjustments
    - i. Taxes
    - ii. Water
    - iii. Heating Oil
    - iv. Deposit
2. Preparation of Transfer Gains Tax Form TP-584 (\$5.00 filing fee).
3. Preparation of Deed.
4. Order payoff letter(s) and calculate per diem interest; coordinate filing of Satisfaction of Mortgage.
5. Obtain brokers' statements.

XII. Post Closing

1. Review Title Policy. If Policy is acceptable, make a copy for the file and send policy and abstract to clients.
2. Review Deed. Make a copy for the file and send original to client.
3. Change your client's address for your file!

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